

JON M. SANDS
Federal Public Defender
District of Arizona
850 W. Adams, Suite 201
Phoenix, Arizona 85007
Telephone: 602-382-2700

BENJAMIN GOOD,
New York State Bar # 5415914
Asst. Federal Public Defender
Attorney for Defendant
benjamin_good@fd.org

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

United States of America,

Plaintiff,

vs.

Timothy Jason Wells,

Defendant.

No. CR-17-1114-PHX-DLR

**DEFENDANT'S MOTION TO
STRIKE GOVERNMENT'S
SENTENCING MEMORANDUM**

Timothy Jason Wells, through the undersigned counsel, respectfully moves to strike those portions of the government's response to his objections to the Presentence Report (PSR) that invite the Court to sentence him based on his constitutional rights to free speech and free association (Doc. 83 at 8–9 & Doc. 83-1 at 21). The political views Mr. Wells expressed on Facebook are described in the PSR and in the government's response to his objections to the PSR. *See* PSR ¶ 6; Doc. 83 at 2–3, 8–9. The government's filing also gratuitously includes a photograph of political bumper stickers from Mr. Wells' house. Doc. 83-1 at 21 (Gov't Ex. H). In its memorandum, the government actually goes so far as to urge the Court to sentence Mr. Wells based on "the hate that he holds toward some groups." *Id.* at 9. The Court should reject this invitation and strike those portions

1 of the government's filing and the PSR that describe these beliefs, because
2 considering them at sentencing would violate Mr. Wells' First Amendment rights.
3 *See, e.g., Dawson v. Delaware*, 503 U.S. 159, 166–67 (1992) (finding error in
4 admission at penalty phase of capital trial of evidence concerning defendant's
5 abstract beliefs, including membership in Aryan Brotherhood). Mr. Wells' political
6 views are not relevant to any issues at sentencing: he posted about guns on
7 Facebook during a period when he legitimately believed that he still had his gun
8 rights; his views about "some groups" are not relevant "history and characteristics";
9 and, of course, the First Amendment trumps Congress' statutory mandate that the
10 Court consider relevant circumstances. *Cf.* Doc. 83 at 9 (arguing incorrectly that
11 the § 3553(a) factors have no limitation in scope).
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14 Respectfully submitted: November 15, 2018.

15 JON M. SANDS
16 Federal Public Defender

17 *s/Benjamin Good*
18 BENJAMIN GOOD
19 Asst. Federal Public Defender
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1 Copy of the foregoing transmitted
2 by ECF for filing November 15, 2018, to:

3 CLERK'S OFFICE
4 United States District Court
5 Sandra Day O'Connor Courthouse
6 401 W. Washington
7 Phoenix, Arizona 85003

8 LISA JENNIS
9 Assistant U.S. Attorney
10 United States Attorney's Office
11 Two Renaissance Square
12 40 N. Central Avenue, Suite 1200
13 Phoenix, Arizona 85004-4408

14 Copy mailed to:

15 JEFFREY P. BALDYS
16 U.S. Probation Officer

17 TIMOTHY JASON WELLS
18 Defendant
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